

## Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-08 FRB-03  
   INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02 OPIC-03  
   SP-02 LAB-04 SIL-01 OMB-01 L-03 NSC-05 SS-15  
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P R 131015Z SEP 78  
FM AMEMBASSY DACCA  
TO SECSTATE WASHDC PRIORITY 735  
INFO AMCONSUL KARACHI

C O N F I D E N T I A L DACCA 5539

E.O. 11652: GDS  
TAGS: EINV BG US  
SUBJECT: FARROKH CAPTAIN CLAIMS AGAINST BDG: REQUEST FOR GUIDANCE

REFS: A. DACCA 2309, B. DACCA 2655, C. DACCA 3262, D. STATE  
      119519, E. STATE 086002

SUMMARY. FARROKH CAPTAIN HAS ADVISED EMBASSY THAT THE BDG  
HAS SUMMARILY REJECTED HIS CLAIMS AND THAT IT WILL SELL HIS

FORMER PLANT IN CHITTAGONG TO A PRIVATE BUYER IMMEDIATELY  
UNLESS HE MAKES A COMPETITIVE OFFER TO REPURCHASE IT BY  
TOMORROW MORNING, SEPTEMBER 14. CAPTAIN REQUESTS EMBASSY  
INTERVENTION. WE BELIEVE BDG HAS NOT GIVEN CAPTAIN A FAIR  
HEARING AND HAVE AGAIN ASKED THAT IT DEFER A DECISION ON  
THE CHITTAGONG PLANT. CAPTAIN'S LAWYER ADVISES HE CANNOT  
APPEAL THE DECISION IN BANGLADESH COURTS. REQUEST GUIDANCE.  
END SUMMARY.

1. FARROKH CAPTAIN ARRIVED IN DACCA SEPTEMBER 8 TO PURSUE  
HIS CLAIMS AGAINST THE BDG FOR RECOVERY OF HIS CHEMICAL  
PLANT IN CHITTAGONG AND RECOVERY OR COMPENSATION FOR HIS  
PLANT IN DACCA. HE MET WITH SECRETARY OF INDUSTRIES  
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MATIUL ISLAM SEPTEMBER 12.

2 IN A MEETING WITH AMBASSADOR AND ECONOFF THE SAME  
DAY CAPTAIN SAID ISLAM ADVISED HIM THAT, ON THE ADVICE  
OF THE BDG LAW MINISTRY WHICH HAD CONSIDERED THE BRIEF  
PREPARED FOR CAPTAIN BY ARNOLD AND PORTER, THE BDG HAD  
DECIDED TO (A) REJECT CAPTAIN'S CLAIM FOR RETURN OF THE

CHITTAGONG PLANT AND TO PROCEED TO AUCTION THE PLANT TO A PRIVATE BUYER, AND (B) TO DENY COMPENSATION FOR THE DACCA PLANT WHICH WAS SOLD IN 1974. ACCORDING TO CAPTAIN ISLAM SAID THE BDG BASED ITS DECISION ON THE FOLLOWING GROUNDS:

A. SINCE THE COMPANIES WERE "ABANDONED" PAKISTANI-REGISTERED CORPORATIONS, THEY WERE NOT FOREIGN-OWNED ASSETS.

B. IN SOME CASES WHERE BENEFICIAL INTERESTS IN ABANDONED PAKISTANI COMPANIES WERE OWNED BY FOREIGNERS, THE BDG HAS RECOGNIZED CLAIMS AND AGREED TO PAY COMPENSATION; IT DOES NOT CHOOSE TO DO SO IN THIS CASE.

C. THE PROPERTIES WERE TAKEN OVER BY THE BDG AND BECAME THE GOVERNMENT'S IN 1972 WHEN THE ABANDONED PROPERTY ORDER WAS ISSUED, NOT WHEN THE BDG TOOK POSSESSION IN 1974, AS ASSERTED IN CAPTAIN'S BRIEF.

D. SINCE CAPTAIN IS NOT A NATIVE-BORN AMERICAN CITIZEN AND DID NOT ACQUIRE U.S. CITIZENSHIP UNTIL 1973, THE BDG DOES NOT REGARD HIS CASE AS CLAIMS PRESENTED BY AN AMERICAN CITIZEN.

E. SINCE CAPTAIN'S COMPANIES WERE LOCAL CURRENCY INVESTMENTS, AS OPPOSED TO INVESTMENTS OF FOREIGN EXCHANGE, THE GOVERNMENT DOES NOT REGARD THEM AS "FOREIGN INVESTMENTS" IN ANY CASE.

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3. ACCORDING TO CAPTAIN, ISLAM SAID THE GOVERNMENT'S DECISION WAS FINAL. HOWEVER IT WOULD CONSIDER AN OFFER FROM CAPTAIN TO PURCHASE THE CHITTAGONG PROPERTY IF CAPTAIN WISHED TO BID FOR THE PROPERTY. SINCE THE GOVERNMENT COULD NOT DELAY FURTHER AUCTIONING THE PROPERTY, CAPTAIN WOULD HAVE TO INDICATE HIS INTEREST IN PURCHASING THE PROPERTY WITHIN 48 HOURS, I.E. BY WEDNESDAY MORNING, SEPTEMBER 14.

4. CAPTAIN SAID HE URGED ISLAM TO CONSIDER THAT THE U.S. GIVES GENEROUS AID TO BANGLADESH AND THAT U.S. LAW PROVIDES FOR TERMINATION OF AID TO NATIONS WHICH DO NOT PAY PROMPT AND ADEQUATE COMPENSATION TO OWNERS OF NATIONALIZED PROPERTY; ISLAM WAS NOT MOVED BY THESE ARGUMENTS.

5. CAPTAIN SAID HE HAD BEEN ADVISED BY A COMPETENT DACCA ATTORNEY THAT HE CANNOT CHALLENGE THE GOVERNMENT'S DECISION IN COURT BECAUSE OF A MARTIAL LAW ORDER PUBLISHED LAST YEAR WHICH PRECLUDES LITIGATION OF CLAIMS BY EX-OWNERS OF ASSETS SEIZED UNDER THE ABANDONED PROPERTY ORDER.

6. CAPTAIN URGED THE EMBASSY TO APPEAL TO THE GOVERNMENT TO RECONSIDER HIS CASE, SINCE WITHOUT USG INTERVENTION HE HAS NO FURTHER REMEDIES. ALTHOUGH TH HAD HAD NO TIME TO CONSIDER WHETHER OR NOT HE COULD OFFER TO REPURCHASE HIS PROPERTY, HE WAS INCLINED TOWARD THAT OPTION, GIVEN THE REMOTE CHANCE OF RECOVERING ANY MONEY FROM THE BDG, EVEN IF IT SHOULD DEFER ITS DECISION TO SELL THE CHITTAGONG PLANT IMMEDIATELY. IN ANY CASE, IT WOULD BE IMPOSSIBLE FOR HIM TO MAKE SUCH AN IMPORTANT DECISION WITHIN 48 HOURS.

7. AMBASSADOR ADVISED CAPTAIN TO ATTEMPT TO STALL BDG'S DECISION TO DISPOSE OF THE CHITTAGONG PROPERTY AND ASKED HIM TO INFORM US ON THE COURSE OF ACTION HE PROPOSES TO  
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TAKE SO THAT WE COULD CONSIDER HIS REQUEST FOR EMBASSY HELP.

8. WE HAVE NOT YET HEARD FROM CAPTAIN TODAY (TUESDAY, SEPTEMBER 13) WE EXPECT THAT HE IS SEEKING ADVICE FROM

HIS LAWYER, BILL ROGERS OF ARNOLD AND PORTER, BY TELEPHONE BEFORE DECIDING A STRATEGY. IN THE MEANTIME ECONOFF HAS MADE AN APPOINTMENT TO SEE SECRETARY ISLAM AT 11 O'CLOCK WEDNESDAY MORNING, SEPT 14 TO DISCUSS CAPTAIN'S CASE. SINCE WE HAVE BEEN UNABLE TO SPEAK TO ISLAM DIRECTLY BY TELEPHONE TODAY, WE HAVE SENT HIM A LETTER STRONGLY URGING HIM TO DEFER ACTION CONCERNING THE CHITTAGONG PROPERTY UNTIL CAPTAIN HAS HAD A FULLER OPPORTUNITY TO PURSUE HIS CLAIM AND CONSIDER THE GOVERNMENT'S RESPONSE TO HIS CLAIM.

9. IN OUR MANY CONTACTS WITH MFA AND THE MINISTRY OF INDUSTRIES CONCERNING CAPTAIN'S CLAIM WE HAVE INSISTED THAT HE BE ACCORDED A FULL OPPORTUNITY TO PRESENT HIS CLAIM TO THE BDG. WE DO NOT YET HAVE ISLAM'S VERSION OF THE BDG'S POSITION ON CAPTAIN'S CLAIM. HOWEVER ASSUMING CAPTAIN'S ACCOUNT IS CORRECT, AND WE BELIEVE THE SUMMARY TREATMENT HE RECEIVED FROM ISLAM IS UNFAIR, AND WE OBJECT TO THE UNREALISTIC 48-HOURX DEADLINE FOR HIS DECISION TO DECIDE WHETHER OR NOT TO PURCHASE THE PROPERTY. MOREOVER, UNLIKE SIMILAR CASES IN OTHER COUNTRIES, CAPTAIN APPEARS TO HAVE NO LEGAL REMEDIES IN BANGLADESH TO CHALLENGE IN COURT WHAT IS CLEARLY AN ADMINISTRATIVE DECISION. WE INTEND TO EXPRESS THESE CONCERNS TO THE BDG.

10. ACTION REQUESTED DEPARTMENT: IN LIGHT OF THE ABOVE  
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AND THE ARGUMENTS PRESENTED IN CAPTAIN'S BRIEF, WEHICH THE  
DEPARTMENT HAS EXAMINED, WE URGENTLY REQUEST DEPARTMENT'S  
GUIDANCE ON FURTHER REPRESENTATIIONS WE MAY MAKE TO THE  
BDG ON CAPTAIN'S BEHALF.  
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## Message Attributes

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